IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.582 OF 2007
IN
SUIT NO. 335 OF 2007

M/S. SOPARIWALA JOGLEKAR & NOOR ... PLAINTIFFS.
VS.
M/S. O.K.MOTOR WORKS & ORS. ... DEFEDANTS.

MR. B.PATIL I/B. ISHA VALANI FOR THEPLAITIFFS
MR. PRAVI SAMDAI WITH HEMAG RAYTHATTA I/B. RMG LAW FOR THE DEFENDAT OS. 2 & 3.

Coram : S.K.Shah, J.
Date : March 6, 2007.

P.C.:-

1. This is Plaintiffs motion seeking relief of appointment of receiver and also injunction against the defendant No.2 and 3, restraining them from parting with possession and creating third party right and interest in the suit property.

2. Plaintiff is the owner and also builder of multi storied building. The defendant No.1 was running a garage in the part of the premises, before construction of the building was started. Defendant NO. 1 became owner of the area adm. 7200 sq.feet. There was an agreement between the defendant No.1 and the Plaintiff that the defendant No.1 would not transfer the business of M/s. O.K.Motor Works of garage during the currency of the agreement.

3. The contention of the Plaintiff is that the building is not yet complete and, therefore, the agreement is in force. During the force of the agreement, the defendant NO.1 has transferred the entire premises adm. 7200 sq.ft. in favour of defendant NO.2 & 3 and, therefore the present suit is filed.

4. Prima facie case is in favour of the Plaintiff, however, as regards the balance of convenience and irreparable loss, no case is made out by the plaintiff for the relief sought.

5. It is not in dispute that the construction of the entire premises adm. 7200 sq. ft. has been completed and it is after completion thereof, there is an agreement to pass conveyance in that regard in favour of the defendant No.1.

6. There is clause NO. 27 in the agreement, which reads thus :-

> "Clause 27 : The Tenants do hereby agree ad covenant with the Owners and the Developers or their nominees that they will not during the currency of this Agreement id any manner alienate and/or encumber, create any third party

rights and/or assign, transfer the said business of M/s. O.K.Motors Works or any part thereof to any person i howsoever manner until the said development of the said property in terms of the said plan that may be sanctioned by the Municipal Corporation of Greater Mumbai is fully completed in all respect."

7. The learned Counsel for the defendant NO. 2 & 3 points out that the construction of the building was completed in 1983 itself. Therefore, what remains is only a formal conveyance to be passed in favour of the defendant NO. 1. As earlier observed, there is no irreparable loss which is going to be caused to the Plaintiff nor there is any balance of convenience in favour of the Plaintiff, as he himself is responsible for not passing a conveyance in favour of the defendant NO.1. Therefore, I do not find any merit in this notice of motion. The notice of motion is accordingly dismissed.

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[S.K.Shah , J.]